

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
KENNETH ALTIZIO,

Docket No.: 07 CV 6663 (CLB)(GAY)

Plaintiff,

-against-

MARRIOTT INTERNATIONAL, INC.,

Defendant.
-----X

MOTION BY:

GARBARINI & SCHER, P.C.
Attorneys for Defendant
MARRIOTT INTERNATIONAL, INC.

**DATE, TIME AND
PLACE OF HEARING:**

September 14, 2007 at 9:00 am at the U.S. Courthouse
located at 300 Quarropas Street, White Plains, NY

SUPPORTING PAPERS:

Affidavit of William G. Scher, with Exhibits and
Memorandum of Law.

RELIEF REQUESTED:

An Order pursuant to 28 U.S.C. §1404(a) transferring
this action to the United States District Court for the
District of New Hampshire

ANSWERING PAPERS:

To be submitted pursuant to the FRCP and Local
Civil Rules.

Dated: New York, New York
July 27, 2007

Yours, etc.,

GARBARINI & SCHER, P.C.

By: _____

WILLIAM G. SCHER (WS 2891)
Attorneys for Defendants
Office & P.O. Address
432 Park Avenue South
New York, NY 10016-8013
(212) 689-1113

TO:

EDWARD L. FORD, ESQ.
Attorney for Plaintiff
175 Main Street, Suite 416
White Plains, NY 10601
(914) 997-5162

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
KENNETH ALTIZIO,

Docket No.: 07 CV 6663 (CLB)(GAY)

Plaintiff,

-against-

AFFIDAVIT IN SUPPORT

MARRIOTT INTERNATIONAL, INC.,

Defendant.

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WILLIAM G. SCHER, an attorney duly admitted to practice law before the Courts of the State of New York, and of the United States District Courts of New York, having been duly sworn, deposes and says:

1. I am a member of the law firm of GARBARINI & SCHER, P.C., attorneys for defendant, MARRIOTT INTERNATIONAL, INC. (hereinafter "MARRIOTT"), in this action, and submit this Affidavit in support of MARRIOTT's Motion pursuant to 28 U.S.C. §1404(a) and the underpinnings of the doctrine of *forum non conveniens*, transferring the venue of this action from this Court to the United States District Court for the District of New Hampshire.

PROCEDURAL BACKGROUND

2. This action was commenced through the service of a Summons and Complaint on or about June 27, 2007. A copy of such Summons and Complaint is attached hereto as Exhibit "1."

FACTUAL BACKGROUND SUPPORTING TRANSFER OF VENUE

3. A review of plaintiff's Complaint reveals allegations that on or about January 16, 2007 plaintiff allegedly sustained personal injury while present at defendant's hotel facility in Nashua, New Hampshire when plaintiff allegedly fell in the parking lot thereat due to the presence of ice and snow.

4. Inspection of the subject location whether by the parties, their attorneys, their experts, the Court or a jury during the course of the trial would necessarily take place in the District of New Hampshire.

5. Additionally, in light of the presence of physical evidence and witnesses in Massachusetts which is clearly more than one hundred (100) miles from this Court and not subject to the subpoena power of this Court [see, F.R.C.P. 45(b)(2)], transfer of this action to the United States District Court for the District of New Hampshire absolutely mandated herein. This is particularly given the fact that the non-party snow removal company, Country Connections Landscaping, LLC, was solely responsible for snow and ice removal at the subject location, and more importantly, has its sole business operation in the State of New Hampshire, has no connection whatsoever with New York and thus would not be amenable to a suit in this Court. Further, Country Connections Landscaping, LLC is beyond the subpoena power of this Court with respect to the conducting of discovery or summoning such party to trial of this action in the Southern District of New York. Attached hereto as Exhibit "2" is the Landscaping Management Contract detailing Country Connection's responsibilities vis a vis the subject location.

6. It should be further noted that both Samantha Rowell and Mark Normand, citizens and residents of New Hampshire, met plaintiff immediately after her fall offered assistance and would

serve as witnesses at the time of trial of this action. See Accident Report attached hereto as Exhibit "3".

7. Moreover, regardless of venue, any Court hearing this action will apply the law of the State of New Hampshire, which differs from that of the State of New York. As MARRIOTT demonstrates in the accompanying Memorandum of Law, the Federal Courts have held that in such a situation it is preferred that an action proceed in a district in the same state as the applicable law.

8. Plaintiff's residence in New York is the only nexus between his accident and the Southern District of New York.

9. The gravamen of this action concerns a local question concerning the safety and maintenance of premises within the State of New Hampshire, rather than issues concerning New York. The Federal Courts have held that jurors in this district should not carry the burden of resolving matters that have no relevant interest to their community. Due to the paucity of connections between plaintiff's incident in New York, the occurrence of this incident in New Hampshire, the lack of adequate authority to subpoena important witnesses of substantial evidence, and the convenience of having to conduct depositions for testimony in New Hampshire, the interest of justice mandates that this Court exercise its broad discretion and transfer this action to the United States District Court for the District of Hampshire.

10. The legal authority laid out in the accompanying Memorandum of Law mandates immediate transfer of venue of this matter.

WHEREFORE, defendant MARRIOTT respectfully requests that this Court transfer this action to the United States District Court for the District of New Hampshire.

Dated: New York, New York
July 27, 2007

WILLIAM G. SCHER (WS 2891)

Sworn to before me this
day of July, 2007

Notary Public, State of New York

AFFIDAVIT OF SERVICE BY MAIL

[illegible]

Carol A. Stanton, being duly sworn, deposes and says, that the deponent is not a party of the action and is over 18 years of age.

That on the day of July, 2007, the undersigned served the within

**NOTICE OF MOTION, AFFIDAVIT WITH EXHIBITS
AND MEMORANDUM OF LAW**

upon the attorneys named below by depositing a true copy of the same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York, and directed to the said attorneys at the address indicated below, such address being the address designated by said attorneys for that purpose.

EDWARD L. FORD, ESQ.
Attorney for Plaintiff
175 Main Street, Suite 416
White Plains, NY 10601
(914) 997-5162

Carol A. Stanton

Sworn to before me this
day of July, 2007

Lynne Williams
Notary Public, State of New York
City of New York No. 01WI4507978
Certificate filed in Richmond County
Commissions Expires June 30, 2011

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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